

GEOSEARCH, INC.

IBLA 79-104

Decided May 14, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, dismissing protest against the continued validity of two oil and gas leases. W 58667 and W 60047.

Vacated and remanded.

1. Oil and Gas Leases: Applications: Drawings—Oil and Gas Leases: Bona Fide Purchaser

Where BLM does not reject simultaneous non-competitive oil and gas lease offers drawn with second priority after the issuance of the leases to the first drawees, the second drawees retain an interest which must be considered if the leases are cancelled because the first drawees' offers are defective, provided that the leases have not been assigned to bona fide purchasers. In those circumstances, BLM's decision dismissing the second drawees' protests against the continued validity of these leases for lack of interest must be vacated.

2. Oil and Gas Leases: Bona Fide Purchaser

A decision by BLM dismissing protests against the continued validity of the leases because the assignees are bona fide purchasers will be vacated where the record contains no statement by the assignees of oil and gas leases that they are bona fide purchasers, and the matter will be remanded so that BLM may join the assignees to the protest proceedings in order to give them the opportunity to show that they hold and acquired the interest as bona fide purchasers, and to give the protestants the opportunity to present prima facie evidence to the contrary, per 43 CFR 3102.1-2(c).

APPEARANCES: Melvin Leslie, Esq., Salt Lake City, Utah, for appellant; William R. Hamm, Esq., Milwaukee, Wisconsin, for lessees/protestees and Resource Service Company.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

On October 27, 1978, Geosearch, Inc., (Geosearch), filed a protest with the Wyoming State Office, Bureau of Land Management (BLM), against the continued validity of oil and gas leases W 58667 and W 60047. Geosearch, which is the assignee of the offerors whose drawing entry cards were drawn with second priority in the two drawings preceding the issuance of these leases, alleged that the leases were invalid because Fred Engle, d/b/a Resource Service Company (RSC), had undisclosed interests in the lessees' underlying offers in violation of 43 CFR 3102.7 and 3112.5-2. Geosearch sought the cancellation of all interests in these leases presently held by persons who are not bona fide purchasers and the issuance of these interests to it as the next qualified offeror for each lease.

On November 1, 1978, BLM dismissed this protest, noting that the leases in question had been assigned in full prior to the filing of the protest by Geosearch. BLM concluded, "Since these two lease offers have been issued and full record title assignments approved, we do not believe the number 2 drawees of these simultaneous oil and gas drawings have an interest to assign to Geosearch, Inc. See 43 CFR 3102.1-2, Bona Fide Purchasers regulation." Geosearch has appealed from this decision.

[1] BLM did not reject the offers of the offerors whose drawing entry cards were drawn with second and third priority after the issuance of these leases to the offeror whose card was drawn with first priority. Accordingly, the offers of second and third drawees remained on file. Also, as they were never officially notified that their offers were rejected, they never had opportunity to appeal. Thus, their offers remained viable. See Geosearch, Inc., 39 IBLA 49, 51 n. 1 (1979); Beard Oil Co., 77 I.D. 166 (1970). It is true that if the leases had been assigned to bona fide purchasers, the second drawees could not have succeeded to the leases even if the first drawees' offers were defective. 43 CFR 3102.1-2. However, the second drawees' offers will still have to be considered if the assignees were not bona fide purchasers and the underlying lease offers were defective.

[2] The present record does not indicate that the assignees of these leases are bona fide purchasers. As Geosearch points out in its statement of reasons, there is a possibility that the assignees knew that the underlying lease offers were defective, as it had become apparent at the time of these assignments that many of the lease offers of clients of RSC were defective, owing to its use of a service agreement which invested RSC with an undisclosed interest in

leases won by its clients. Alfred L. Easterday, 34 IBLA 195 (1978) ^{1/}; Sidney H. Schreter, 32 IBLA 148 (1977); Lola I. Doe, 31 IBLA 394 (1977). As the lessees' addresses of record were RSC's address, the assignees would have had to contact RSC in order to negotiate the purchase of these leases and so would have known that the lessees were RSC clients. Moreover, there are no statements in the record from the assignees themselves that they purchased these lease interests without knowledge of the possibility that the underlying lease offers were defective.

In such circumstances, it is appropriate to remand the matter to BLM to join the assignees to the protest proceedings in order to give them the opportunity to show that they hold and acquired the interests as bona fide purchasers without having violated any provisions of the bona fide purchasers laws. 43 CFR 3102.1-2(c); Gus Panos, 21 IBLA 163 (1975); Tiffany Trust, 21 IBLA 160 (1975); Duncan Miller, A-30600 (Dec. 1, 1966); J. Penrod Toles, 68 I.D. 285 (1961). BLM should also allow Geosearch an opportunity to present prima facie evidence that the assignees are not bona fide purchasers. 43 CFR 3102.1-2(c).

As BLM did not reach the merits of Geosearch's assertion in its protest that the underlying lease offers in these leases were defective, on remand BLM must make this determination as its first order of business. Should it conclude that the subject leases were issued to offerors who were not qualified, it should then inquire into the bona fides of the assignees and take whatever action is indicated by its findings. This Board, as an appellate tribunal, ordinarily will not make the initial decision in such cases. ^{2/}

^{1/} Appeal pending.

^{2/} It is also unnecessary for us to make an initial ruling on some of the other questions which may yet be presented in consequence of these protest proceedings, but which should not be lost to sight. Among these are:

(1) If the leases cannot be canceled because of the protection afforded a bona fide purchaser, is the overriding royalty reserved by assignors an "interest" in such leases within the meaning of 30 U.S.C. § 184 (1976) and subject to cancellation and sale by the Secretary?

(2) If those whose offers were drawn with second priority are found to be the first qualified offerors entitled to have received the leases, and if they should seek and obtain a civil court judgment imposing a constructive trust for their benefit on the proceeds from the sale of the leases, would they have a right superior to the United States to the reserved overriding royalties?

(3) If the reserved overriding royalties are "a partial interest" or "less than the whole interest" within the context of 30 U.S.C. § 184(h)(2) (1976) and 43 CFR 3102.1-2(b), are they subject to administrative cancellation, or must judicial proceedings be initiated for that purpose?

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and remanded.

Edward W. Stuebing
Administrative Judge

We concur.

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge

